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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re K.B., a Person Coming Under the Juvenile Court
Law.

C088141

THE PEOPLE,

(Super. Ct. No. JV137893)

Plaintiff and Respondent,

v.

K.B.,

Defendant and Appellant.

Minor K.B. appeals from the juvenile court's denial of his Welfare and Institutions Code section 782¹ motion to dismiss his delinquency petition. The minor contends the juvenile court erred in finding dismissal was precluded by subdivision (d) of section 786.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

We agree. The juvenile court erroneously believed that the portion of section 786 that precludes dismissal “pursuant to [that] section” restricted its discretion to dismiss pursuant to section 782. We shall reverse and remand for additional proceedings so the court may properly exercise its discretion.

BACKGROUND

On December 29, 2015, around 8:30 a.m., a Walgreens pharmacy on Del Paso Road was robbed at gunpoint by two individuals. The robbers took 4,700 10-milligram hydrocodone pills, 2,000 five-milligram hydrocodone pills, and a bottle of promethazine before fleeing in a vehicle. The minor’s mother later identified him as one of the perpetrators.

The minor subsequently admitted the allegation in a section 602 petition that he committed one count of robbery. (Pen. Code, § 211.) The juvenile court found the minor a ward of the court and placed him on probation with 116 days in juvenile hall and 116 days of credit. In a subsequent proceeding, the juvenile court ordered the minor jointly and severally liable with his mother to pay \$4,996.78 in victim restitution to Walgreens.

On June 4, 2018, minor’s counsel filed proof with the juvenile court showing that the minor had paid his restitution fine and there was an outstanding balance of \$4,596.78 on the victim restitution order. The trial court found the minor had successfully completed probation and terminated probation that same day.

Minor’s counsel requested dismissal of the petition under section 782 on September 7, 2018. The prosecutor raised an objection “to a dismissal of this petition pursuant to the language in 786(d). It contemplates that a dismissal or sealing would not be appropriate for a 707(b) offense.” In support of this argument, the prosecutor noted the minor had been found to have committed robbery under Penal Code section 211.

The juvenile court denied the petition. Although the court understood the minor was requesting dismissal pursuant to section 782, “the Court still finds that the underlying policy of a juvenile committing a strike offense and a violation of Penal Code section 211

as a 707 offense that it is not in the interest of justice to dismiss the petition entirely. [¶] The Court notes that the record does indicate that [the minor] did successfully complete his terms of probation but that strike will remain on his record. So the Court believes the request would undermine the express statutory language of 786(d) and that the section should be read together. [¶] So the motion is denied.”

DISCUSSION

The minor contends dismissal under section 782 was not precluded by subdivision (d) of section 786. We agree.

This case is an application of section 782, which provides: “A judge of the juvenile court in which a petition was filed may dismiss the petition, or may set aside the findings and dismiss the petition, if the court finds that the interests of justice and the welfare of the person who is the subject of the petition require that dismissal, or if it finds that he or she is not in need of treatment or rehabilitation. The court has jurisdiction to order dismissal or setting aside of the findings and dismissal regardless of whether the person who is the subject of the petition is, at the time of the order, a ward or dependent child of the court. Nothing in this section shall be interpreted to require the court to maintain jurisdiction over a person who is the subject of a petition between the time the court’s jurisdiction over that person terminates and the point at which his or her petition is dismissed.” (§ 782.)

Section 782 affords a juvenile court broad discretion to dismiss a delinquency petition where dismissal would serve the interests of justice and the welfare of the minor. (*In re Greg F.* (2012) 55 Cal.4th 393, 419.) “Section 782, like Penal Code section 1385, is a general dismissal statute, and once a juvenile court has determined in its discretion ‘the interests of justice and the welfare of the person who is the subject of the petition require that dismissal’ (§ 782), such a dismissal is intended to erase a prior adjudication—not merely reduce or mitigate it—and to thereby protect the person from

any and all future adverse consequences based on that adjudication. [Citations.]” (*In re David T.* (2017) 13 Cal.App.5th 866, 877.)

Section 786, on the other hand, provides a streamlined dismissal and sealing process for minors who satisfactorily complete supervision or probation following a delinquency petition. (*In re G.F.* (2017) 12 Cal.App.5th 1, 7.) Pursuant to section 786, the juvenile court shall dismiss the petition and order all records pertaining to the petition dismissed after the minor satisfactorily completes probation or supervision. (§ 786, subd. (a).) But, the statute also states that a “court shall not seal a record or dismiss a petition *pursuant to this section* if the petition was sustained based on the commission of an offense listed in subdivision (b) of Section 707 that was committed when the individual was 14 years of age or older unless the finding on that offense was dismissed or was reduced to a misdemeanor or to a lesser offense that is not listed in subdivision (b) of Section 707.” (§ 786, subd. (d), italics added.) Robbery is one of the offenses listed under section 707, subdivision (b). (See § 707, subd. (b)(3).)

By its own terms, the limitation in subdivision (d) applies only to section 786 dismissals. The juvenile court’s broad discretion to dismiss in the interests of justice pursuant to section 782 is not limited in any way by section 786, subdivision (d).² While

² See also *In re David T.*, *supra*, 13 Cal.App.5th at page 878 [“We do not agree that the Legislature’s 2015 amendment of section 786 to add subdivision (d) warrants the assumption that the Legislature, in failing to also amend subdivision (a)(1)(D) of section 781 to add similar language, must have intended for a person whose petition was dismissed under section 782 to be precluded from record sealing under section 781 if the offense dismissed was a crime listed in subdivision (b) of section 707. Section 782 is a very different statute from section 786 in that it vests broad discretion in the trial court and contains a much higher standard for dismissal. Therefore, we do not agree with respondent that amended subdivision (d) of section 786 sheds any light on the Legislature’s intent with respect to the effect of a dismissal under section 782 on a person’s eligibility for record sealing under section 781”]; *People v. Haro* (2013) 221 Cal.App.4th 718, 721-724 [discussing the effect of dismissal under section 782 on the use of that adjudication as a strike under the three strikes law].

the juvenile court did not directly state that its discretion was limited by section 786, its comments, particularly the statement that section 782 had to be harmonized with section 786, when taken in context of the prosecutor's legally incorrect argument that section 786, subdivision (d) precluded a section 782 dismissal for a robbery, lead us to conclude that the juvenile court found its discretion limited by subdivision (d) of section 786.

When a court misapprehends the scope of its discretionary authority, reversal and remand to allow the court to exercise its informed discretion is the appropriate remedy. (See *People v. Brown* (2007) 147 Cal.App.4th 1213, 1228 [a sentencing decision made in the erroneous belief that the court lacked discretion generally must be reversed and remanded so that the court can exercise its informed discretion at a new sentencing hearing].) Such is the case here. While the juvenile court may, in its discretion, deny the dismissal motion, and may consider the nature and severity of the minor's offense in doing so, it cannot, as it did here, deny the motion on the ground of "harmonizing" sections 782 and 786, subdivision (d).

DISPOSITION

The order denying the motion to dismiss pursuant to section 782 is reversed and the matter remanded for proceedings consistent with this opinion.

KRAUSE, J.

We concur:

HULL, Acting P. J.

BUTZ, J.